

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Genevieve Lamont	Team: Squad #8	CCRB Case #: 201902083	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 03/11/2019 1:00 AM	Location of Incident: Manhattan Times Square Hotel	Precinct: 18	18 Mo. SOL 9/11/2020	EO SOL 4/28/2021	
Date/Time CV Reported Mon, 03/11/2019 8:05 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/11/2019 8:05 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Falcon	14123	954788	MTN PCT
2. POM Nicholas Kozlowski	13917	960773	MTN PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Falcon	Abuse: Police Officer Michael Falcon questioned § 87(2)(b)	
B.POM Michael Falcon	Abuse: Police Officer Michael Falcon threatened to arrest § 87(2)(b)	
C.POM Michael Falcon	Abuse: Police Officer Michael Falcon took a photograph of § 87(2)(b)	
D.POM Michael Falcon	Abuse: Police Officer Michael Falcon failed to provide § 87(2)(b) with a business card.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On March 11, 2019, § 87(2)(b) filed the following complaint with the CCRB by phone.

On March 11, 2019, between 12:00 a.m. and 1:00 a.m., § 87(2)(b) engaged in a verbal argument inside a hotel room at the Manhattan Times Square Hotel in Manhattan with § 87(2)(b) who demanded that § 87(2)(b) pay him, before allegedly stealing his cellphone and wallet. § 87(2)(b) asked hotel security to call 911. PO Michael Falcon and PO Nicholas Kozlowski of the 18th Precinct responded to the scene. § 87(2)(b) informed the officers what happened and that he was gay, to which PO Falcon asked him if he had hired § 87(2)(b) as a prostitute, which § 87(2)(b) denied (**Allegation A: Abuse of Authority**; § 87(2)(g)). PO Falcon then allegedly informed § 87(2)(b) that if they discovered § 87(2)(b) had solicited § 87(2)(b) for sex, he would be arrested (**Allegation B: Abuse of Authority**; § 87(2)(g)). He allegedly then took a photograph of § 87(2)(b) on his cellphone (**Allegation C: Abuse of Authority**; § 87(2)(g)). After taking a report for § 87(2)(b)'s missing items, the officers then left. PO Falcon did not provide § 87(2)(b) with his business card (**Allegation D: Abuse of Authority**; § 87(2)(g)).

§ 87(4-b) § 87(2)(g) Surveillance footage could not be located for this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Michael Falcon questioned § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Michael Falcon threatened to arrest § 87(2)(b)

While it is undisputed that PO Falcon questioned § 87(2)(b) as to whether he hired § 87(2)(b) as a prostitute, § 87(2)(g) § 87(2)(b) testified that he informed PO Falcon that he had encountered § 87(2)(b) at a Taco Bell on 8th Avenue earlier that day, and that they had decided to get a hotel room together, as he was not allowed to bring guests back to his shelter [BR01]. He did not inform PO Falcon of his past sexual relationship with § 87(2)(b) or that § 87(2)(b) had requested payment from him. After informing PO Falcon he was gay, PO Falcon asked § 87(2)(b) if he had hired § 87(2)(b) as a prostitute. § 87(2)(b) asked PO Falcon why he would think that, to which PO Falcon responded that it was strange to invite a man into his hotel room. PO Falcon asked § 87(2)(b) if § 87(2)(b) was a prostitute two to three times. PO Falcon informed § 87(2)(b) that if, upon locating § 87(2)(b) he informed them that § 87(2)(b) had paid him for sex, § 87(2)(b) would be arrested.

PO Falcon testified that § 87(2)(b) informed him and PO Kozlowski that he had run into § 87(2)(b) whom he met through Grindr (a gay dating app), and they had decided to get a hotel room together [BR02]. § 87(2)(b) also informed the officers that § 87(2)(b) “went nuts” while in the room, and demanded that § 87(2)(b) pay him for his time, stealing his wallet and cellphone. PO Falcon then asked § 87(2)(b) if he had hired a prostitute, which § 87(2)(b) denied. He believed that § 87(2)(b) may have hired a prostitute as he met § 87(2)(b) on 8th Avenue, which he stated is known for prostitution, and § 87(2)(b) asked for compensation from

§ 87(2)(b) He denied threatening to arrest § 87(2)(b) if he discovered that § 87(2)(b) was hired as a prostitute. PO Kozlowski was present during this interaction, and was consistent with PO Falcon's testimony [BR03].

According to Patrol Guide Procedure 212-11, a common law right of inquiry is an encounter between a civilian and a uniformed member of service conducted for the purpose of asking the civilian pointed or accusatory questions because the police officer has a "founded suspicion" that criminal activity is afoot. "Founded suspicion" is defined in the Patrol Guide as when there is some present indication of criminality based on observable conduct or reliable hearsay information [BR04].

As per NY CLS Penal Code §230.04, a person is guilty of patronizing a person for prostitution in the third degree when he or she patronizes a person for prostitution. [BR15].

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Michael Falcon took a photograph of

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) testified that after PO Falcon asked if he hired a prostitute, PO Falcon took a photograph of him on his cellphone [BR01]. PO Falcon did not request permission to take § 87(2)(b)'s photograph. PO Falcon denied taking a photograph of § 87(2)(b) stating there was no reason to [BR02]. PO Kozlowski did not observe PO Falcon take a photograph of § 87(2)(b) [BR03].

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Michael Falcon failed to provide § 87(2)(b) with a business card.

It is undisputed that PO Falcon did not provide § 87(2)(b) with his business card at the conclusion of the incident.

§ 87(2)(b) testified that after a report was taken for his cellphone, he requested PO Falcon's name, which was provided [BR01]. PO Falcon did not provide a business card to § 87(2)(b).

PO Falcon testified that he did not provide his business card to § 87(2)(b) as he did not ask for one and the incident did not involve a stop, question, and frisk [BR06]. PO Falcon was equipped with business cards during the incident. PO Kozlowski testified that PO Falcon was

equipped with business cards during the incident, but did not provide one, as the incident did not require him to and § 87(2)(b) did not request one [BR03].

According to Patrol Guide Procedure 203-09, a member of service must offer a business card, except in cases when a summons is issued or an arrest is made, for noncustodial questioning of individuals suspected of criminal activity [BR07]. Additionally, NYC Administrative Code §14-174 requires that a police officer, in instances of noncustodial questioning of individuals suspected of criminal activity, must offer a business card to such person at the conclusion of such activity if an arrest is not made or a summons is not issued [BR08].

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party in one other CCRB complaint, § 87(2)(b)
- PO Falcon has been a member of service for five years, and has been subject in one previous CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- PO Kozlowski has been a member of service for three years. This is the first CCRB complaint in which he has been a subject. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On June 28, 2019, a FOIL request was sent to the New York City Office of the Comptroller to determine if a Notice of Claim was filed regarding this complaint [BR10].

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date